CERTIFICATE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 765.

GEORGE M. WEST COMPANY, APPELLANT,

vs.

LEA BROS. & COMPANY.

CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

FILED APRIL 1, 1904.

(17,340.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 755.

GEORGE M. WEST COMPANY, APPELLANT,

vs.

LEA BROS. & COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 4, 1899.

1 United States Circuit Court of Appeals, Fourth Circuit.

GEORGE M. WEST COMPANY, Appellant,
vs.
LEA BROS. & COMPANY ET ALS., Appellees. } No. 305.

In error to the district court of the United States for the eastern district of Virginia, sitting at Richmond, Virginia.

This is to certify that Lea Bros. & Company *et als.*, appellees, filed their petition in bankruptcy in the district court of the United States for the eastern district of Virginia on December 12, 1898, against the George M. West Company, of the city of Richmond, State of Virginia, alleging that the George M. West Company, their debtor, a corporation created and doing business under the laws of the State of Virginia, filed a general deed of assignment in the clerk's office of the chancery court of the city of Richmond on the 12th day of December, 1898, conveying to Joseph V. Bidgood, trustee, all of its assets, a copy of which deed is herewith filed and asked to be taken and considered as a part of this petition.

Your petitioners aver and charge that the said George M. West Company was engaged principally in printing, publishing and mercantile pursuits and conducted business in the city of Richmond for a period of at least six months prior to the execution of said deed, at which place was its principal office.

Your petitioners aver and charge that the said George M. West Company was at the time of the filing of the said deed of assignment, and is now, justly indebted to them in the amounts set opposite their names, respectively, which said amounts aggregate the sum of more than five hundred dollars: Lea Bros. & Co., $205.00; Blakiston's Sons & Co., $245,00; George B. Baines & Sons, $25.00, and Ginn & Co., $335.00.

2 Your petitioners aver and charge that the indebtedness due to each of them is a debt provable under the United States bankrupt law and are for merchandise furnished by them to the said George M. West Company at its request, and for the payment of which neither of them hold any securities of any kind, nature or description whatsoever.

Your petitioners aver and charge that the said George M. West Company is insolvent, and that by the filing of the said general deed of assignment it has committed an act of bankruptcy, and that the said general deed of assignment is null and void and of no force and effect whatsoever, and is in contravention of the United States bankrupt statutes.

Your petitioners respectfully pray that the said George M. West Company and Joseph V. Bidgood, trustee in said general deed of assignment, be made parties defendant hereto; that the said George M. West Company may be adjudicated a bankrupt; that its assets may be taken into and under the control of this court; and that all such orders may be entered as may be necessary in the case, and

all such other relief granted to your petitioners as the nature of their case may require and to the court may seem meet.

And your petitioners will ever pray, &c.

LEA BROS. & CO.
P. BLAKISTON, SON & CO.
GINN & CO.

(*Copy of Deed.*)

This deed, made this tenth day of December, 1898, between the George M. West Company, a corporation under the laws of Virginia, of the first part, and Joseph V. Bidgood, named as trustee, of the second part.

Witnesseth, that in accordance with resolutions of the stockholders and board of directors of the party of the first part, of this date, and by the authority thereby given to George M. West, president of the said company, and in consideration of the sum of five dollars, in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the said George M. West Company hereby grant and convey to the said Joseph V. Bidgood all of their assets, consisting of open accounts, estimated at about $3,800, and the stock on hand in their store, No. 834 E. Main street, together with the furniture and fixtures in said store to them belonging, it being the intention hereby to convey all of the assets of the company of whatever kind; in trust, nevertheless, to pay the cost of drawing, recording and executing this deed, including a fee of fifty dollars to Henry & Williams for legal services connected therewith, and a commission of ten per cent. on all moneys collected and paid out by the said trustee, and the wages of such agents and attorneys as he may need to aid in the execution of this trust, and next to pay all of the debts of the company, whether due, or to become due, without priority, except such priority as any may have under the laws of Virginia, and the balance, if any, to be paid to the party of the first part, or its assigns, and the said trustee is hereby authorized and directed to take possession at once of the assets hereby conveyed, and, as speedily as possible, collect the debts due the company, and to sell the other assets as he may think best for the interest of the creditors, employing suitable agents therefor.

3 And a list of the assets and of the liabilities will be furnished him, from the books of the company, to enable him to execute the trust hereby imposed on him.

In witness whereof the said company has herewith signed its name, by its president, and affixed its corporate seal, attested by the secretary, the day and year first above mentioned.

[SEAL.] THE GEORGE M. WEST COMPANY,
By GEO. M. WEST, *President.*

Attest: WM. B. ISAACS, *Sec'y.*

The appellant on December 27th, 1898, filed its plea or answer to said petition in bankruptcy, as follows:

EASTERN DISTRICT OF VIRGINIA, *ss:*

And now on this day the said George M. West Company by George M. West, its president, and Joseph V. Bidgood, trustee, appear and deny that the said company was insolvent, as defined in the act of Congress under which this proceeding is had, at the time of the filing of this petition against it by the said creditors, and aver that its property was at a fair valuation then sufficient in amount to pay its debts, and thereupon they pray that this be inquired of by the court, and that the said company be not declared a bankrupt, but this proceeding be dismissed as required by said act.

The appellees then moved the court on December 28th, 1898, as follows:

In the United States District Court for the Eastern District of Virginia.

In the Matter of GEORGE M. WEST COMPANY, Bankrupt.

The petitioners in the involuntary petition in bankruptcy filed herein on the 12th day of December, 1898, come this day, by their attorneys, and move the court to reject the plea or answer filed herein by the said George M. West Company on the 27th day of December, 1898, and adjudicate the said George M. West Company a bankrupt.

4 The court sustained the said motion of appellees, and on January 10, 1899, entered the following order:

In the District Court of the United States for the Eastern District of Virginia.

LEA BROS. & Co., &c.,
vs.
GEO. M. WEST Co., &c.

This day came again the petitioners, by counsel, and the defendant, The Geo. M. West Co., in pursuance of the summons awarded against them on the 12th day of December, 1898, requiring them to show cause why they should not be adjudicated to be involuntary bankrupts, appeared in open court and presented and filed a plea in writing, alleging the solvency of said company, which plea the petitioners, by motion in writing, duly filed, moved the court to reject. And said petitioners also filed a certain other petition in writing, setting out the fact that the law & equity court of the city of Richmond, at the instance of certain creditors secured in the deed of assignment of the said Geo. M. West Company, had taken charge of the administration of the trust, under the deed of assignment, on the day of the recordation of the said assignment; and of the filing

of the petition in bankruptcy, and appointed the trustee named in said deed of assignment its receiver; and upon the answer, in writing, of the said Geo. M. West Company, John L. Williams & Sons John Skelton Williams and Jos. V. Bidgood, this day filed, to said last-named petition, and upon the exceptions filed by the petitioners to the said last-mentioned answers, and upon the several exhibits filed with said several papers, and was argued by counsel.

Upon consideration whereof, the court, being of the opinion that the making of the general deed of assignment was of itself an act of bankruptcy and void at the instance of the creditors, doth reject the said plea alleging solvency, and being of opinion that, in the event of bankruptcy, the administration of the estate of the bankrupt should be in this court, doth adjudge, order and decree that the said deed of assignment be, and the same is hereby, declared null and void, and that the said Geo. M. West Company has become a bankrupt within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and is hereby declared and adjudged a bankrupt accordingly.

And, thereupon, it is ordered that this cause be referred to W. F. Wickham, of Richmond, Virginia, one of the referees in bankruptcy of this court, to take such other proceedings therein as are required by said law; and further, that the said Geo. M. West Company, on or before the 20th day of January, 1899, at twelve o'clock noon, file with said referee a schedule of their li-bilities and an inventory of their assets at the time of the filing of said petition, and further, that the said Geo. M. West Company attend before said referee on said day, and henceforth, as said referee may direct, to submit to such orders as may be made by said referee, or by this court, relating to his said bankruptcy.

5 And the court doth overrule the exceptions to the said answers filed to the said last-mentioned petition, and doth further adjudge, order and decree that the Geo. M. West Company, Jos. V. Bidgood, in his individual capacity and as trustee and receiver, as set forth in this proceeding, be enjoined and restrained, until the further order of this court from disposing of, or parting with, the proceeds arising from the sale of the stock and assets of said Geo. M. West Company, now in hand or which may hereafter be received, and that John L. Williams, John Skelton Williams, R. Lancaster Williams, and Langbourne M. Williams, trading as John L. Williams & Sons, and Jno. Skelton Williams, in his individual capacity, be likewise enjoined and restrained until the further order of this court from the further prosecution of their suit aforesaid in the law and equity court of the city of Richmond in which the estate of the bankrupt company is sought to be administered.

And the clerk of this court will forthwith cause a copy of this order to be served upon each of the parties aforesaid who are enjoined by this order.

An appeal being desired from this decree to the United States circuit court of appeals for this circuit, the same is hereby allowed,

upon condition that it be taken and perfected in time to be heard on the first day of the next term of said circuit court of appeals, and upon further condition that an appeal bond with good security be executed before this court in the penalty of $200.00, as required by law.

Pending the appeal hereby allowed, the injunction aforesaid is not to interfere with the disposition by sale of the residue of the stock and assets on hand, belonging to the said George M. West Company, or collection of accounts or other debts due to it, or to the payment of the current expenses incident to said sale or collection.

EDMUND WADDILL, JR., *Judge.*

Richmond, Va., Jan'y 10th, 1899.

Whereupon the cause was taken on error to the circuit court of appeals for the fourth circuit, and having come on for argument at the February term, 1899, of the said circuit court of appeals for the fourth circuit before the undersigned, and said court desiring for its proper decision the instruction of the Supreme Court of the United States concerning a certain question or proposition of law arising in said cause—

Now, therefore, we, the undersigned, do hereby certify said
6 question or proposition of law to the Supreme Court of the United States for instruction as aforesaid.

Question. Whether or not a plea that the party against whom the petition was filed "was not insolvent as defined in the bankrupt act at the time of the filing of the petition against him" is a valid plea in bar to a petition in bankruptcy filed against a debtor who has made a general deed of assignment for the benefit of his creditors.

As witness our hands this 24th day of February, 1899.

NATHAN GOFF,
U. S. Circuit Judge.
THOS. J. MORRIS,
District Judge.
WM. H. BRAWLEY,
District Judge.

Endorsed: "The clerk is directed to file and transmit certified copy to the Supreme Court. Feb. 24, 1899. Nathan Goff. Filed Feb. 24, 1899."

7 UNITED STATES OF AMERICA:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true copy of the original certificate filed and now remaining of record in the therein-entitled cause.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the United States circuit court of appeals for the fourth circuit, at Richmond, on this 27th day of February, A. D. 1899.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals.

8 [Endorsed:] Geo. M. West Co., appellant, *vs.* Lea Bros. & Co. *et al.*, appellees. Certified question of law from U. S. circuit court of appeals, fourth circuit. In bankruptcy. Attorneys — appellant, Henry & Williams, State Bank building, Richmond, Va.; attorneys for appellees, Dawson & Seaton, Shafer building, Richmond, Va.

Endorsed on cover: File No. 17,340. U. S. C. C. of appeals, 4th circuit. Term No., 755. George M. West Company, appellant, *vs.* Lea Bros. & Company *et al.* (Certificate.) Filed April 1st, 1899.